



Planning Department

Pl.B.
TOWN OF ACTON
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MEMORANDUM

To: John Murray, Temporary Town Manager **Date:** December 21, 2007
From: Roland Bartl, AICP, Planning Director *R.B.*
Subject: Possible Zoning Amendments for 2008 Annual Town Meeting

The Planning Board has agreed to hold a hearing on the following proposed zoning articles – probably in early February 2008. I am submitting them to you for preliminary placement on the 2008 Annual Town Meeting warrant before the closing date on December 31, 2007.

A. Acton Open Door Theater/ Dragonfly Theater

Mr. Bern Haan and Ms. Catherine Longwell, supporters of The Acton Outdoor Theater/Dragonfly Theater have approached the Town and this Department with a proposed zoning change that would allow the construction of a theater building and facility in one of two locations that they are considering for this endeavor. The Open Door Theater is an Acton volunteer institution that has produced annual shows since its inception in 1980. It is my understanding that the theater has staged its productions for the most part in the High School auditorium. The effort to build its own facility is in memory of Jennifer Doran Haan, who had been a central figure for the theater until her death in April 2007. Mr. Haan and Ms. Longwell have presented two proposals:

1. Rezone a sizeable, largely vacant property at 484 Great Road ("The Buxton Land" which has an older conservation restriction on it) from single-family Residence 8 (R-8) to Limited Business (LB). This property contains two parcels. The LB district allows Commercial Entertainment (defined in the zoning bylaw as "An indoor facility such as a theatre, cinema, performing arts center, or video arcade") by special permit. It comprises commercially used properties in the Great Road corridor.
2. Change the zoning bylaws use regulations to allow Commercial Entertainment in the Light Industrial 1 (LI-1) district. The LI-1 district comprises the cluster of manufacturing and office buildings around Post Office Square near the Acton Center. Mr. Haan owns or has option on a property at 524 Main Street in that district.

The attached **Draft Zoning Article A** takes a different approach seeking to narrow the focus and minimize unintended consequences. It would establish a cultural district overlay for the two properties in question.

B. Municipal Exemption

This subject has been discussed briefly with the Design Review Board (DRB) at a Planning Board meeting in the fall of 2007. The subject came up in connection with questions about the proper placement of the North Acton Fire Station building. Selectman Rosenzweig is scheduled to meet with the Planning Board on January 8, 2008 to discuss this further. Currently, the Acton zoning bylaw contains a municipal use exemption, i.e. municipal uses are allowed in every zoning district. However, there are no exemptions for municipal uses, sites, or building from the zoning bylaw's dimensional rules and requirements.

Municipal exemption could be achieved through a blanket exemption, with or without a public zoning review (i.e. special permit and hearing). A special permit could be used, if the general public process for Town capital projects is deemed insufficient. An alternative to the blanket exemption could be the creation of a municipal use district that would include all Town facilities and properties, but may be at the beginning as small as, for instance, the fire station lot in North Acton. For a municipal use district, the zoning bylaw could, but does not have to prescribe separate dimensional standards, standards for public review, and procedures to waive standards.

Municipal use is defined in the zoning bylaw as uses, buildings, and structures by the Town of Acton and the Acton Water District. When discussing a municipal use exemption, thought should be given if the exemption should apply to either entities or just to the Town of Acton.

The attached **Draft Zoning Article B** outlines drafts for a blanket exemption and a municipal use district, making no distinction - for now - between the Town and the Water District.

C. Restaurant Outdoor Seating

This has been discussed with the Design Review Board (DRB) at a previous meeting. The DRB, with approval from the Board of Selectmen, had submitted in the fall of 2007 specific recommendations for zoning amendment to encourage outdoor seating at restaurants. From this, the attached **Draft Zoning Article C** was created.

D. Light Industrial 1 District – Increase of FAR Ceiling to 0.20

The EDC has met with property owners in the LI-1 District (area at Post Office Square) for nearly a year to understand their concerns over the present FAR limit, and with Planning staff to study the implications and benefits of a possible increase in the FAR limit. The EDC then issued a recommendation for the FAR limit to increase to 0.20. The attached **Draft Zoning Article D** would implement the EDC recommendation.

E. Senior Residence – Off-Site Affordable Units Option/Affordable Housing Contribution

The attached **Draft Zoning Article E** would provide a generic basis for the Planning Board to allow off-site affordable family housing or to accept money to the Town's affordable housing fund as alternatives to on-site affordable units in Senior Residence developments under section 9B of the zoning bylaw.

F. Wireless Facilities – Rewrite

Attached as **Draft Zoning Article F** is the current draft version by the Wireless Communications Facilities Bylaw Study Committee of an article to replace the cell tower moratorium and the presently suspended section 3.10 of the zoning bylaw.

G. Miscellaneous Clean-up

See attached **Draft Zoning Article G** for the following:

Zoning Map Designations: The addition of a couple of new districts in preceding draft articles drew attention to the listing and incorporation of the zoning maps in the bylaw. The sequence for the numbered maps was out of order, and, more importantly, there appeared to be some confusing statements as to their various dates of adoption, last amendment dates, and the incorporation of future amendments without having to continually update this section.

Two-Family Dwelling in the NAV District: Two-family use was introduced a few years ago as a separate land use category. The NAV district prohibits two-family dwellings. All other village districts (SAV, EAV, and WAV), plus the multi-family districts, and the Village Residential district around West Acton center allow them. There is no reason – other than “oops, we forgot” – to treat NAV differently with respect to this land use type.

Zoning Enforcement Officer: The recent departure of the Building Commissioner has made it clear that the Town needs to have a back-up plan for zoning enforcement. While there is currently a temporary building commissioner appointed, he lacks the required experience in zoning. The role currently falls to the Planning Director.

Re-lettering Signs: There appears to be an inconsistency and/or possible deficiency in section 7 – Signs and Advertisement Devices regarding the definition of ‘Erecting’ a sign (section 7.2.5), the bylaw’s treatment in general of re-lettering signs as equivalent to “Erecting” signs (section 7.4.4), and the effective grandfathering of non-conforming signs (section 7.12). Case law has weighed in over the years on this matter of zoning for signs and changes were made in the bylaw to respond to specific case outcomes. The current configuration in the bylaw seems a bit incongruous and it is unclear if it is consistent with most recent case law. There is no specific draft until Town Counsel has reviewed of the matter and provided guidance.

Cc: Planning Board
Town Counsel

DRAFT ARTICLE A
(Two-thirds vote)

AMEND ZONING BYLAW
CULTURAL OVERLAY DISTRICT

To see if the Town will vote to amend the zoning map and bylaw as follows:

- A. In the zoning bylaw, section 4 – Overlay Districts, insert a new section 4.5 as follows:

4.5 Cultural District

- 4.5.1 Purpose – Non-profit performing arts institution enrich the culture and life of residents in Acton and surrounding communities through entertainment, engagement, artistic expression, interaction, and participation. The purpose of this section is to provide such institutions with potential opportunities to locate their facilities in areas and zoning districts where they would not otherwise be allowed under the more general use definition 3.5.16 – Commercial Entertainment of this Bylaw.
- 4.5.2 Overlay District – The Cultural District is an overlay district. Its boundaries are superimposed on the underlying zoning districts. Its presence does not prevent or alter development of land in accordance with the regulations of the underlying zoning districts.
- 4.5.3 Permitted Uses: Performing Arts Facilities – Facilities for and activities of the performing arts owned and operated by non-profit institutions or organizations, or public governmental agencies. Performing arts shall mean the creating and staging of live public performances of drama, comedy, music, dance, mime, and circus arts, or similar acts in a theater, concert hall, or similar facility, including related activities such as but not limited to practice, publicity, sale of promotional materials, and education.
- 4.5.4 Dimensional and Other Regulations – The regulations of the underlying district and of other overlay districts, if present, shall apply in the Cultural District.
- 4.5.5 Parking Regulations – The parking requirements of Section 6 of this bylaw shall apply.
- 4.5.6 Use Special Permit – The establishment of a Performing Arts Facility shall only be allowed with a special permit granted by the Board of Selectmen in accordance with section 10.3 of this bylaw.
- 4.5.7 Site Plan Special Permit – A Site Plan Special Permit shall be required in accordance with section 10.4 of this bylaw.

- B. In the zoning bylaw, section 2.1 – Classification of Districts, insert at the end, below “Overlay Districts” a new line as follows:

CULTURAL DISTRICT

CD

- C. On the zoning map Number 1, identify the CD (Cultural District) in the legend and show the Cultural District to comprise the following parcels of land identified by their 2007 Town Atlas Map and Parcel numbers [*Underlying zoning and street addresses are not part of the article but are shown for reference purposes only*]:

map	parcel	underlying zoning	street address
C-4	15	R-8	484 Great Rd.
C-4	17	R-8	486 Great Rd.
E-4	24	LI-1	524 Main St.

, or take any other action relative thereto.

SUMMARY

The Open Door Theater is an Acton non-profit volunteer institution that has produced annual shows since its inception in 1980. In its productions, this community theater works with adults, children, and people with special needs who live in Acton and in surrounding communities. Productions are staged in the High School auditorium. The effort to build its own facility, The Dragonfly Theater, is in memory of Jennifer Doran Haan, who had been a central figure for the Open Door Theater for many years until her death in April 2007. This article would allow the creation of a home for the theater in one of two potential locations that the theater's supporters are currently investigating. The article creates an overlay district for these two sites, where a performing arts facility may be located by special permit from the Board of Selectmen. An overlay district is superimposed on the underlying district. It leaves the regulations of the underlying district intact. Development of a performing arts facility as allowed in the overlay district of this article is an added option for the land included in the overlay district. By adopting this article, the Town recognizes the important and valuable contribution that cultural institutions such as the Open Door Theater make to the enrichment and diversity of life and community in Acton.

Direct inquiries to: Roland Bartl, AICP, Town Planner – planning@acton-ma.gov/(978) 264-9636
Selectman assigned:

Board of Selectmen:

Finance Committee:

Planning Board:

DRAFT ARTICLE B – OPTION 1
(Two-thirds vote)

**AMEND ZONING BYLAW
MUNICIPAL EXEMPTION**

To see if the Town will vote to amend the zoning bylaw by deleting the lead paragraph of section 1.4 and replacing it with the following:

1.4 Applicability – All LOTS and parcels of land in the Town of Acton and all BUILDINGS, STRUCTURES and other improvements thereon shall be subject to the regulations, restrictions and requirements established in this Bylaw.

1.4.1 Except when specifically referred to or stated otherwise, this Bylaw shall not apply to any municipal USE, BUILDING, or STRUCTURE, including any associated grading, filling, excavating, or vehicular parking.

1.4.2 Except when specifically referred to or stated otherwise, this Bylaw shall not apply to STREETS, appurtenances and easements thereto or to railroad rights of way.

[Note: section 1.4 currently states:

1.4 Applicability - All LOTS and parcels of land in the Town of Acton and all BUILDINGS, STRUCTURES and other improvements thereon shall be subject to the regulations, restrictions and requirements established in this Bylaw. Except when specifically referred to or stated otherwise, this Bylaw shall not apply to STREETS, appurtenances and easements thereto, to railroad rights of way, or to any BUILDING, STRUCTURE or USE of land, including grading, filling, and excavating, which is associated with a public sewer collection system owned or operated by the Town of Acton.]

And, renumber current subsection 1.4.1 to become subsection 1.4.3.

, or take any other action relative thereto.

SUMMARY

-insert-

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Selectman assigned:

Board of Selectmen:

Finance Committee:

Planning Board:

DRAFT ARTICLE B – OPTION 2
(Two-thirds vote)

**AMEND ZONING BYLAW
MUNICIPAL USE DISTRICT**

To see if the Town will vote to amend the zoning bylaw and map as follows:

A. In section 2.1 – Classification of Districts, insert under Special Districts the following new district designation:

MUNICIPAL USE DISTRICT

MU

B. In section 3 – Table of Principal Uses, insert under Special Districts a new column entitled MU. In line 3.4.1 – Municipal of the column under MU, enter Y, in all other lines enter N.

- C. In section 5 – Table of Standard Dimensional Regulations, insert after Special Districts a new line entitled MU and enter NR in the fields under each column.
- D. In section 6 – Parking Standards, insert a new section 6.11 as follows:
- 6.11 The requirements for vehicular parking of this section 6 shall not apply in the Municipal USE (MU) District.
- E. In the Zoning Map Number 1, identify the MU (Municipal USE) District in the Legend and rezone to MU the following parcels of land identified by their 2007 Town Atlas Map and Parcel numbers [*Present zoning and street addresses are not part of the article but are shown for reference purposes only*]:
-

map	parcel	present zoning	street address
D-5	28	LB	655 Main Street
(other)	?		
(other)	?		

, or take any other action relative thereto.

SUMMARY

-insert-

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Selectman assigned:

Board of Selectmen:

Finance Committee:

Planning Board:

DRAFT ARTICLE C
(Two-thirds vote)

AMEND ZONING BYLAW
OUTDOOR RESTAURANT SEATING

To see if the Town will vote to amend the zoning bylaw, Section 3, Use Definitions, by deleting section 3.5.5, Restaurant, and replacing it with a new section 3.5.5, Restaurant, as follows:

3.5.5 Restaurant – Establishment where food and beverages are sold within a BUILDING to customers for consumption 1) at a table or counter, or 2) in an adjacent outdoor space that does not obstruct a public way, sidewalk, walkway, vehicular parking, or a driveway, or 3) off the premises as carry-out orders, except that drive-up service shall not be allowed, or 4) any combination of the above. In the OP-2 and the TD District, the minimum square
footage for an individual restaurant shall be 5,000 square feet measured in NET FLOOR AREA.

[Note – Section 3.5.5 currently reads as follows:

3.5.5 Restaurant – Establishment where food and beverages are sold within a BUILDING to customers for consumption 1) at a table or counter, or 2) on a patio closed on all sides with entrance to the patio normally available only from the BUILDING, or 3) off the premises as carry-out orders, except that drive-up service shall not be allowed, or 4) any combination of the above. In the OP-2 and the TD District, the minimum square footage for an individual restaurant shall be 5,000 square feet measured in NET FLOOR AREA. In the EAV District, service through walk-up windows may be allowed, and patios may be open and accessible from the outside.]

, or take any other action relative thereto.

SUMMARY

This article changes the definition of a restaurant to allow more flexibility in outdoor seating throughout the town with the provision that such arrangements not obstruct public ways, sidewalks, parking lots, and similar facilities. This makes the zoning provisions for outdoor seating uniform town-wide where previously such flexible outdoor seating was only allowed in the East Acton Village District, and otherwise only in an enclosed patio that can be accessed only from the inside of the restaurant.

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Selectman assigned:

Board of Selectmen:

Finance Committee:

Planning Board:

DRAFT ARTICLE D
(Two-thirds vote)

AMEND ZONING BYLAW
LI-1 DISTRICT; INCREASE FLOOR AREA RATIO TO 0.20

To see if the Town will vote to amend the zoning bylaw, Section 5, Table of Standard Dimensional Regulations, by changing the entry in column "MAXIMUM FLOOR AREA RATIO" and line "LI-1" from 0.10 to 0.20.

, or take any other action relative thereto.

SUMMARY

This article doubles the maximum Floor Area Ratio (FAR) in the Light Industrial – 1 (LI-1) zoning district from 0.10 to 0.20. The LI-1 district is located on approximately 60 acres north and south of Main Street at Post Office Square and consists of nine properties of varying size.

The district is largely built out under the current 0.10 FAR limit allowing only about 43,000 additional square feet to the 281,000 square feet of total existing floor area in the district. The existing net floor area is spread amongst the nine properties. One is built out in excess of the existing and proposed FAR limit, another is very near the proposed limit, three are between the existing and proposed FAR limits, two are below the existing limit, and one property is still vacant. The proposed FAR increase would accommodate an additional 201,000 square feet above the existing floor area in the district, or 158,000 square feet more than under the current FAR limit. The proposed zoning change results from work of the Town's Economic Development Committee. The committee reviewed the LI-1 zoning district and its current zoning limitations after a meeting that some property owners in the district had requested.

The proposed change brings most of the district properties into zoning conformance, and allows for additional growth on key parcels where additional building floor area, if permitted, would help retain longstanding Acton companies. The LI-1 district is currently the most restricted industrial zoning district. No other district has a FAR limit below 0.20. This change would bring the district up to par with most other industrial and commercial district, and provide growth opportunity for Acton's commercial/industrial tax base. The 50% open space requirement in the district would remain intact, which is the most stringent in all industrial districts – usually 35%. Except for two residential areas, which have adequate buffers to the district, the land surrounding the district is vacant.

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Board of Selectmen:

Finance Committee:

Planning Board:

DRAFT ARTICLE E
(Two-thirds vote)

AMEND ZONING BYLAW
SENIOR RESIDENCES – AFFORDABLE HOUSING ALTERNATIVES

To see if the Town will vote to amend the zoning bylaw by inserting a new subsection 9B.12.9 under section 9B – Senior Residence as follows:

3B.12.9 Affordable Housing Alternatives - The Planning Board in its special permit may authorize or require the substitution of required AFFORDABLE SENIOR RESIDENCES with:

3B.12.9.1 Off-site AFFORDABLE DWELLING UNITS, which shall be in suitable condition for family or individual persons' housing as the Planning Board may determine, and eligible for inclusion in Acton's subsidize housing inventory under M.G.L. Chapter 40B.

3B.12.9.2 Monetary contributions for affordable housing programs made to the Acton Community Housing Program Fund in an amount sufficient for the Town or its designee to create off-site affordable family or individual persons' housing, as the Planning Board may determine, and eligible for inclusion in Acton's subsidize housing inventory under M.G.L. Chapter 40B.

, or take any other action relative thereto.

SUMMARY

The Acton zoning bylaw includes a section that regulates the construction of senior residence developments. One provision requires the inclusion of affordable dwelling units for seniors. Another provides for increases in density of a project in exchange for additional affordable units for seniors. There is a very limited number of potentially qualifying seniors to purchase such affordable units while keeping the units eligible for inclusion in Acton's subsidized housing inventory under M.G.L. Chapter 40B. In addition, the State's regulations for inclusion of units in the 40B subsidized housing inventory have grown increasingly hostile to senior housing. This article, if adopted, will authorize the Planning Board, when granting a special permit for Senior Residence housing, to arrange for the substitute provision of off-site affordable dwelling units that are not restricted to seniors, or for a monetary contribution to the Acton Community Housing Fund.

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Selectman assigned:

Board of Selectmen:
Finance Committee:
Planning Board:

DRAFT ARTICLE F
(Two-thirds vote)

AMEND ZONING BYLAW
WIRELESS SERVICE FACILITIES

To see if the Town will vote to amend the zoning bylaw by deleting sections 3.10 (Special Requirements for Wireless Communication Facilities), and 3.11 (Temporary Moratorium on Wireless Communication Facilities ...), and replacing them with a new section 3.10 as follows:

3.10 Special Requirements for Personal Wireless Facilities

3.10.1 Purposes

- 3.10.1.1 To allow Personal Wireless Facilities in accordance with and as required by the Federal Telecommunications Act of 1996 and in acknowledgment of M.G.L. Chapter 40A, Section 3.
- 3.10.1.2 To minimize their adverse impacts on adjacent properties, local historic districts, residential neighborhoods, and scenic vistas.
- 3.10.1.3 To establish requirements for their approval, and standards for their design, placement, safety, monitoring, modification, and removal.
- 3.10.1.4 To limit the overall number and height of Personal Wireless Towers to what is essential to serve the public convenience and necessity.
- 3.10.1.5 To promote shared USE of Facilities to reduce the need for new Facilities.

3.10.2 Applicability

- 3.10.2.1 This Section 3.10 shall apply to all reception and transmission Facilities that aid, facilitate, and assist with the provision of Personal Wireless Services.
- 3.10.2.2 No such Facility shall be erected or installed except in compliance with the provisions of this Section 3.10.
- 3.10.2.3 Nothing in this Bylaw shall be construed to regulate or prohibit customary installations for the reception of wireless communication signals at home or business locations.
- 3.10.2.4 Nothing in this Bylaw shall be construed to regulate or prohibit a tower or antenna installed solely for use by a federally licensed amateur radio operator. For regulations on amateur radio towers see Section 3.8.3.6 of this Bylaw.

3.10.3 Definitions

- 3.10.3.1 Adequate Capacity – *(discussed pros and cons of fixed number standards (such as in Concord) v. more general standards and benchmark, if there are any. General standards standard could talk, say, about adequate capacity within coverage area of Personal Wireless Facility as defined by widely accepted and published industry standards, FCC guidelines, or established case law set from time to time. The Board could then state policy in the special permit rules or on a case by case basis on how it views the matter, based on newest standards developed by others. Relate question: How do newer communication types play into what adequate capacity really is - text messages, e-mail, audio, video, games, etc? Do towns need to allow capacity to be built for all of these? – Need input from Counsel!)*.
- 3.10.3.2 Adequate Coverage – *(discussed pros and cons as in 3.10.3.1 above. Need input from Counsel!)*.

- 3.10.3.3 Antenna – Reception and transmission device with the purpose and function to aid, facilitate, and assist with the provision of Personal Wireless Services as identified and defined in the Federal Telecommunications Act of 1996.
- 3.10.3.4 Co-locator – One of two or more Carriers who occupy space on a Tower or Site to locate Antennae and other equipment for the provision of Personal Wireless Services.
- 3.10.3.5 Equipment Compound – A BUILDING or fenced compound at the base of a Tower that encloses necessary equipment and installations to support Personal Wireless Services.

3.10.3.6 FCC – The Federal Communications Commission.

3.10.3.7 Flush Mounted Antennae – Antennae that are mounted directly on the outside surface of a monopole without braces or mounting brackets that extend horizontally from the monopole.

3.10.3.8 Monopole – A single self-supporting tower or pole, with below grade foundation, designed so it does not require braces or guy wires for support and stability.

3.10.3.9 Personal Wireless Services – Commercial mobile communication services and common carrier wireless exchange access services as defined in the Federal Telecommunications Act of 1996 and pertinent FCC regulations, and which require an FCC license to operate.

3.10.3.10 Personal Wireless Service Provider or Personal Wireless Service Carrier (Provider or Carrier) – An entity, licensed by the FCC to provide Personal Wireless Services.

3.10.3.11 Personal Wireless Facility (Facility) – A facility, installation, appurtenance, and equipment, including a Tower, having the purpose and function to aid, facilitate, and assist with the provision of Personal Wireless Services.

3.10.3.12 Personal Wireless Facility Site (Site) – A LOT as defined in this Bylaw; or one or more contiguous LOTS in single ownership; or one or more contiguous LOTS whose individual owners have entered into a partnership, corporation, trust, or other legal entity with the purpose of jointly hosting a Facility.

3.10.3.13 Personal Wireless Tower (Tower) – A tower or pole erected with the purpose of providing Personal Wireless Services and bearing one or more antennae.

3.10.3.14 Significant Gap - *(discussed pros and cons as in 3.10.3.1 above. Need input from Counsell!)*.

3.10.3.15 Stealth Tower – A Monopole with internally mounted antennae that are not visible from the outside of the monopole.

3.10.4 General Prohibitions and Requirements

3.10.4.1 Lattice style towers and similar facilities requiring more than one leg or guy wires for support are prohibited. However, additional equipment may be mounted on an existing lattice tower.

3.10.4.2 No Personal Wireless Tower shall be erected in a Local Historic District or within 500 feet of the boundary of a Local Historic District measured from the center point of a Tower at its base.

3.10.4.3 All STRUCTURES, equipment, utilities and other improvements associated with Personal Wireless Facilities shall be removed within one year after cessation of USE.

- 3.10.4.4 Night lighting of Personal Wireless Facilities is prohibited except for low intensity lights installed at or near ground level in or on the Equipment Compound and in compliance with the Outdoor Lighting Regulations of this Bylaw, section 10.6.
- 3.10.4.5 At least one sign shall be installed in a visible location at the Equipment Compound that provides the telephone number where the operator in charge can be reached at all times.
- 3.10.4.6 Section 6 of the Acton Zoning Bylaw shall not apply to Wireless Communication Facilities.
- 3.10.4.7 ~~Nothing in this Bylaw shall be construed to regulate or prohibit a Personal Wireless Facility on the basis of the environmental effects of radio frequency radiation (RFR) emissions, provided the Facility complies with regulations of the Federal Communications Commission concerning such emissions.~~

3.10.5 Personal Wireless Facilities Allowed by Right

- 3.10.5.1 In all zoning districts, a Personal Wireless Facility shall be allowed and no special permit shall be required,
 - a) if the Facility does not exceed 3 feet in diameter and 12 feet in height and is otherwise in compliance with applicable dimensional requirements of this Bylaw as they relate to the Personal Wireless Facility Site, or
 - b) if the Facility is located entirely within, or mounted on, a BUILDING or STRUCTURE that is occupied or used primarily for other purposes, provided that the BUILDING or STRUCTURE, including the Facility, meets all dimensional requirements of this Bylaw for the zoning district in which the Site is located.
- 3.10.5.2 In the Office Districts (OP-1, OP-2), the Industrial Districts (LI, GI, LI-1, IP, SM), the Powder Mill District (PM), and the Limited Business District (LB), a Monopole Tower shall be allowed and no special permit shall be required, if its height does not exceed applicable height limitations for STRUCTURES and BUILDINGS in the zoning district in which it is located, and if its set back, measured from its center point at its base to all Site boundary lines, is at least the distance equal to its height, but not less than the otherwise applicable minimum yard requirement for BUILDINGS and STRUCTURES in the zoning district.
- 3.10.5.3 Any new equipment owned by a Personal Wireless Service Provider may be mounted on a previously approved Tower without a special permit, if there is no increase in height above the maximum height specified in the special permit for the Tower.

3.10.6 Special Permit for Facilities

- 3.10.6.1 Any Personal Wireless Facility, and any increase in height or size, or reconstruction or replacement of an existing Facility that does not meet the criteria under section 3.10.5 above, may only be allowed by special permit from the Planning Board in accordance with M.G.L. ch. 40A, s.9, subject to the following statements, regulations, conditions and limitations.
- 3.10.6.2 A Personal Wireless Tower shall not exceed a height of 175 feet from ground level, or a height that is allowed without illumination at night under Federal Aviation Administration or Massachusetts Aeronautics Commission regulations, whichever is less. For purposes of determining the height of a Tower, the height shall be the higher of the two vertical distances measured as follows:

- a) The elevation of the top of the pole structure above the mean ground elevation directly at the base of the pole; or
 - b) The elevation of the top of the pole structure above the mean ground elevation within 500 feet of the base of the pole.
- 3.10.6.3 Personal Wireless Towers shall be Stealth Towers. On a case by case basis, generally when aesthetic considerations are less important, the Planning Board may allow Monopoles with external flush mounted Antennae, or external standard antennae that extend laterally from the Monopole.
- 3.10.6.4 Personal Wireless Towers shall be located, designed, and constructed as Monopoles that are extended to or structurally extendable to the maximum height allowed under Section 3.10.6.2 above capable of accommodating the maximum number of technically feasible Co-locator Antennae in the portion of the Monopole above the tree line, as well as an Equipment Compound physically able to, or capable of being enlarged to, fully accommodate the maximum number of Personal Wireless Service Carriers and other equipment necessary for the maximum number of technically feasible Co-locators at the Site.
-
- 3.10.6.5 In all Residential Districts, the setback of a Tower, measured from the center point of the Tower at its base to the boundary lines of the Site, shall be at least the distance equal to the maximum permissible height of the Tower.
- 3.10.6.6 The center point of any Personal Wireless Tower at its base shall be separated from any existing residential BUILDING by a horizontal distance that is at least twice the maximum permissible height of the Tower, unless the residential BUILDING and the Facility are located on the same LOT.
- 3.10.6.7 The Equipment Compound shall be located in the immediate vicinity of the base of the Tower.
- 3.10.6.8 Any Tower shall be designed to accommodate the maximum feasible number of users.
- a) The Planning Board may require the employment of all available technologies and antenna arrangements to minimize vertical space consumption, and require sufficient room and structural capacity for all necessary cables and antennae.
 - b) The Planning Board may require the owner of such Tower to permit other Providers to Co-locate equipment on such Facility upon payment of a reasonable charge, which shall be determined by the Planning Board if the parties cannot agree.
 - c) The Planning Board may require that the equipment of all users of a Tower shall be subject to rearrangement on the Tower or in the Equipment Compound if so directed by the Planning Board at a later time in its effort to maximize Co-location of Carriers. This may result in different vertical Antennae locations, reduced vertical separation of Antennae, and changes of Antenna arrangements.
 - d) The Planning Board may require that the equipment of all users on a Tower shall be subject to relocation to another nearby Tower if so directed by the Planning Board at a later time in its effort to maximize Co-location of Carriers. It may then order the removal of a Tower after the relocation is completed.
 - e) The Planning Board may require long-term easements, leases, licenses, or other enforceable legal instruments that fully support a Facility at its maximum potential technical capacity, including sufficient space on the Tower and for

Facility base equipment to accommodate the maximum number of technically feasible Co-locators at the Site, adequate access and utility easements to the Facility from a public STREET, and the right for the maximum number of technically feasible Co-locators to Co-locate on the Tower and to upgrade the utilities and equipment as needed for maintaining and improving service and capacity.

- 3.10.6.9 Fencing shall be provided to control unauthorized entry into the Equipment Compound and to the Tower. The Planning Board shall require suitable fencing and landscape screening to shield the installation from the view of nearby residences or ways.
-
- 3.10.6.10 In the alternative, the Planning Board may require that all ground equipment must be placed inside a BUILDING where the Planning Board finds that a screened fenced-in compound does not adequately address reasonable and legitimate aesthetic concerns. In such cases, the Planning Board shall have the power under the special permit to regulate the size, shape, and exterior appearance of the BUILDING.
- 3.10.6.11 A Tower approved hereunder shall be used only for the transmission of signals for Personal Wireless Services, except with the specific authorization of the Planning Board.
- a) The Planning Board may approve or require the installation of transmission devices owned, operated, or used by the Town of Acton or any of its agencies.
 - b) The Planning Board may also approve the installation of communication devices by entities other than Personal Wireless Service Carriers, provided that they do not interfere with the Personal Wireless Services and that the intent of this Bylaw to maximize Co-location of Personal Wireless Service Providers is not compromised.
- 3.10.6.12 The Planning Board shall in its special permit make adequate provisions for the removal of the Tower and Equipment Compound after its USE for Personal Wireless Services has ended. It shall require that the Facility location shall be restored to pre-existing conditions as much as is reasonably possible so that no traces of the Facility, including foundation, gravel pads, and driveways, remain visible above ground, and that the location be otherwise stabilized and naturalized as appropriate for the particular Site.
- 3.10.6.13 The Tower owner shall file with the Town Clerk every two years from the date of the special permit a report that certifies that the Facility is in compliance with all applicable FCC regulations and State and Federal laws.
- 3.10.6.14 The Planning Board may limit the number of Towers on a Site to one, or to any other number it deems necessary and appropriate for the Site. Multiple Towers on a single Site shall be separate from one another by at least 40 feet measured between the center points at the Towers' bases.
- 3.10.6.15 The Special Permit application for a Personal Wireless Facility shall be accompanied by a plan showing the Facility location in relation to the boundary lines of the Facility Site and all BUILDINGS within 500 feet, and plans for the installation or construction of the Facility adequate to show compliance with the provisions of this Bylaw, and such supplemental information as may be required by the Planning Board in the Rules and Regulations for a Special Permit for Personal Wireless Facilities. The application shall also include maps showing areas where the proposed top of the Facility will be visible when there is foliage and when there is not.

3.10.6.16 Mandatory Findings – The Planning Board shall not issue a special permit for a Wireless Communication Facility unless it finds that the Facility:

- a) is designed to minimize any adverse visual or economic impacts on abutters and other parties in interest, as defined in M.G.L. c. 40A, s.11;
- b) *(Add finding(s) as to adequate capacity, adequate coverage, and significant gap as appropriate. Need input from Counsel!)*.
- c) cannot for technical or physical reasons be located on an existing Wireless Communication Facility or Tower that provides similar coverage;
- d) cannot be located at any other practicably available site that is less visible to the general public due to technical requirements, topography, or other unique circumstances. The applicant shall have the burden of showing what alternative sites it considered and why such sites are not practicably available;
- e) is sited in such a manner that it is suitably screened;
- f) is colored so that it will as much as possible blend in with its surroundings;
- g) is designed to accommodate the maximum number of users technologically feasible;
- h) is necessary because there is no other Facility with available space or capacity within the targeted coverage area;
- i) is in compliance with applicable Federal Aviation Administration (FAA), Federal Communications Commission (FCC), Massachusetts Aeronautics Commission, and the Massachusetts Department of Public Health regulations;
- j) complies with all applicable requirements of this Bylaw, including Section 10.3.

3.10.6.17 The Planning Board under its special permit authority may waive one or more requirements of this section 3.10.6 and its subsections, and it may grant a waiver from the use restrictions contained in Section 3.4.10 of the Table of Principal Uses, where the Board finds that the relief is necessary to avoid an effective prohibition of Personal Wireless Services in Acton, including effective prohibition of meeting reasonable customer demand for service and effective prohibition of competition between Carriers.

- a) Any request for such waivers shall be supported by the submittal of a study prepared by a qualified technical consultant showing a Significant Gap in coverage, and a preponderance of evidence that no land or site is available that meets the otherwise applicable requirements.
- b) In granting such a waiver or waivers, the Planning Board must find that the extent of the granted relief is mitigated by a showing that the project provides a minimally intrusive viable means of reducing or eliminating such Significant Gap in coverage, and that the desired relief may be granted without substantial detriment to the neighborhood and without denigrating from the intent and purpose of this Bylaw.
- c) However, the Board shall not grant relief from the maximum height limitation in subsection 3.10.6.2.
- d) The Board shall be empowered hereunder to grant relief from any setback requirements in subsections 3.10.6.5 or 3.10.6.6 provided that the Site proposed is demonstrated to be necessary to achieve adequate coverage or capacity and to be minimally intrusive upon the interests of the Town, consistent with sections 3.10.1 – Purpose, and its subsections.

- e) The applicant shall provide the Board with a written statement describing why the requested relief is in the best interest of the Town with reference to section 3.10.1 – Purpose, and its subsections.

, or take any other action relative thereto.

SUMMARY

The one-year moratorium on new wireless communication facilities ends on April 15, 2008. This article, if adopted, would replace the currently suspended section 3.10 (Special Requirements for Wireless Communication Facilities) and section 3.11 (the moratorium). The proposed replacement section 3.10 was developed by the Wireless Communication Facilities Bylaw Study Committee. The committee reviewed bylaws in other municipalities, “model bylaws”, some recent and relevant case law, and FCC rulings. It also reviewed the Town of Acton zoning regulations for wireless service facilities in section 3.10 as most recently amended at the Annual Town Meeting of 2007 before the adoption of the moratorium.

- (To be continued by committee) -

Direct inquiries to: Roland Bartl, AICP, Town Planner – planning@acton-ma.gov/(978) 264-9636
Selectman assigned:

Board of Selectmen:

Finance Committee:

Planning Board:

To see if the Town will vote to amend the zoning bylaw as follows:

A. Delete section 2.2 – Zoning Map, and replace it with a new section 2.2 as follows:

2.2 Zoning Map – The zoning maps listed below are part of this Bylaw, and are collectively referred to as “The Zoning Map”. The location and boundaries of the zoning districts are shown on the Zoning Maps. The Zoning Maps may be further amended after the listed date or last listed amendment date.

-
- “Zoning Map of the Town of Acton” last amended in April 2008, consisting of a single sheet designated Map Number 1, and showing the Residential, Village, Office, Business, Industrial, and Special Districts, and the Cultural Overlay District.
 - “Flood Insurance Rate Map”, dated January 6, 1988 (Scale 1" = 400' consisting of 8 sheets designated Map Number 2, Sheet 1 of 8 through 7 of 8 plus the map index and street index) and the associated data in the “Flood Insurance Study, Town of Acton, January 6, 1988.”
 - “Groundwater Protection District Map of the Town of Acton”, last amended in 1996; Map Number 3A, consisting of a single sheet at a scale of 1" = 1200', and Map Number 3B, consisting of sheets 3B-1 through 3B-18 at a scale of 1" = 200'. See Section 4.3.2 of this Bylaw for a more detailed description of the Groundwater Protection District and the use of these maps.
 - “Affordable Housing Overlay District Map of the Town of Acton”, last amended in April 2006, consisting of Map Number 4 and shown on the same sheet as Map Number 1.

[Note: Section 2.2 currently reads:

2.2 Zoning Map – The zoning maps described below are part of this Bylaw. Location and boundaries of the zoning districts are shown on the zoning maps, which may be amended and are collectively referred to as “The Zoning Map.”

- *“Zoning Map of the Town of Acton,” amended to April 2006, consisting of a single sheet designated Map Number 1, as amended.*
- *“Groundwater Protection District Map of the Town of Acton, January 1989”, last amended in 1996, designated Map Number 3A, consisting of a single sheet at a scale of 1" = 1200', and Map Number 3B, consisting of sheets 3B-1 through 3B-18 at a scale of 1" = 200'. See Section 4.3.2 of this Bylaw for a more detailed description of the Groundwater Protection District and the use of these maps.*
- *“Flood Insurance Rate Map,” dated January 6, 1988 (Scale 1" = 400' consisting of 8 sheets designated Map Number 2, Sheet 1 of 8 through 7 of 8 plus the map index and street index) and the associated data in the “Flood Insurance Study, Town of Acton, January 6, 1988.”*
- *“Affordable Housing Overlay District Map of the Town of Acton” last amended in April 2006, consisting of a single sheet designated Map Number 4, shown together with the same sheet Map Number 1.]*

B. In section 3, Table of Principal Uses, change the entry in column “NAV”, and line “3.3.3 - Two-Family Dwelling” from N to Y.

C. In section 11, Enforcement, add the following sentences to the lead paragraph of subsection 11.1:

“In the event of an extended vacancy of the Building Commissioner position, the Town Manager may for any necessary time period appoint, hire and appoint, or contract with and appoint, another person to act as Zoning Enforcement Officer or Interim Zoning Enforcement Officer apart from the Building Commissioner. In such event and for any such appointment period, the title Building Commissioner, wherever used in this Bylaw, shall mean Zoning Enforcement Officer or Interim Zoning Enforcement Officer, and the person so appointed shall have the same enforcement function, duties, and authority under this Bylaw as the Building Commissioner.”

[Note: The lead paragraph of section 11.1 currently reads:

11.1 The Building Commissioner of the Town of Acton is hereby designated as the officer charged with the enforcement of this Bylaw.]

D. In section 7, Signs and Advertising Devices ... (review and change as may be appropriate and necessary sections 7.2.5 and 7.4.4 as they are in apparent conflict.)

, or take any other action relative thereto.

SUMMARY

This article makes housekeeping changes: - (to be inserted) -

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